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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 200

BEN H. FRANK,

Petitioner,

vs.

UNITED STATES.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

BRIEF FOR PETITIONER

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The Petitioner was charged by a criminal contempt complaint No. CR-66-120 (Appendix—Page 10).

The District Judge for the United States District Court for the Western District of Oklahoma issued an Order to show cause why Petitioner should not be punished for criminal contempt and appointing attorneys to prosecute (Appendix—Page 14).

Your Petitioner demanded, in writing and orally, a jury trial (Appendix—Page 16) which was denied (Appendix—Page 20).

Your Petitioner was convicted and sentenced to serve three (3) years and was placed on probation and was required to report to the Probation Officer in Tulsa, Okla-

homa on Monday of each week (Appendix—Pages 25 and 26).

After conviction, the Petitioner appealed to the United State Court of Appeals, Tenth Circuit, which court affirmed the conviction (Appendix—Page 28).

The Petitioner feels, beyond a question of a doubt, that his Constitutional rights have been denied to him in that a jury trial was denied after a proper request in writing.

It is deemed unnecessary to cite but one case, that being *Cheff v. Schnackenberg*, 384 U.S. 373, 86 S.Ct. 1523. We quote from the opinion of this Court and *Cheff v. Schnackenberg*, *supra*, as follows:

“ * * * At the same time, we recognize that by limiting our opinion to those cases where a sentence not exceeding six months is imposed we leave the federal courts at sea in instances involving greater sentences. Effective administration compels us to express a view on that point. Therefore, in the exercise of the Court's supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, we rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof. * * * ”

—Title 18, Article 1, U.S.C.A. defines petty offenses, misdemeanors and felony. Such section is, as follows:

“Offenses classified—Notwithstanding any Act of Congress to the contrary:

“(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

"(2) Any other offense is a misdemeanor.

"(3) Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than \$500, or both, is a petty offense."

Amendment Six (6) to the Constitution of the United States is, as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Your Petitioner was not able financially to petition this Court for Certiorari, and asked leave of the Court to permit his petition to be filed and the cause presented at the expense of the Government.

It would clearly appear that under the Law, as above announced, the Petitioner is entitled to a reversal of said cause and the conviction, and is entitled to a jury trial.

It has been suggested that since the Petitioner is unable to pay attorney's fees or cost, that he may request the Court to appoint an attorney but, in all fairness, the attorney representing the Petitioner in this case has not been paid and does not expect to be paid any sum whatever by the Petitioner or anyone else in connection with the appeal.

It is felt that the Petitioner's rights have been violated and that he should have his cause presented to this Court regardless of his financial circumstances.

Your Petitioner, therefore, respectfully submits that his petition should be sustained and this cause reversed.

Respectfully submitted,

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